

October 30, 2003

Honorable Bruce W. Kauffman
United States District Court Judge
U.S. Courthouse
601 Market Street
Room 5613
Philadelphia PA 19106

Re: Clayton Thomas v. Varner, et al.
Civil Action No. 02-4778

RESPONDENTS' OPPOSITION TO PETITIONER'S REQUEST THAT
RESPONDENTS' OBJECTIONS BE OVERRULED AS UNTIMELY

Dear Judge Kauffman:

Petitioner contends that Respondents' Objections to the Report and Recommendation of the Honorable Charles B. Smith, filed on October 20, 2003, are untimely. On the contrary, as reflected on docket entry no. 33, Judge Smith ordered that objections to the Report and Recommendation were due on October 20, 2003.

Moreover, on October 14, 2003, ten days after the Report and Recommendation was entered (excluding weekends and legal holidays), Respondents filed a motion to clarify that the due date for objections was, in fact, October 20, 2003, as set by the Magistrate Judge. A copy of this motion was served on Daniel Silverman, Esquire, counsel for petitioner.

In a subsequent telephone conversation with undersigned counsel, Mr. Silverman took the position that the motion to clarify was itself untimely because it was filed more than ten days after the Magistrate's Report and Recommendation was entered. Undersigned counsel pointed out that under FRAP 26(a), Saturdays, Sundays and legal

holidays are excluded from the computation of any time periods less than 11 days and accordingly, the motion to clarify, filed on October 14, 2003, was timely. In addition, undersigned counsel read to Mr. Silverman the text of Judge Smith's order setting October 20, 2003 as the due date for objections.

Thus, Mr. Silverman's representations that Respondents' Objections are untimely and that Respondents did not seek an extension within the allowed time limits are unfounded.

Respectfully submitted,

Helen Kane
Assistant District Attorney

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cc: Daniel Silverman, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLAYTON THOMAS	:	CIVIL ACTION
	:	
	:	
	:	
BEN VARNER, ET AL.	:	NO. 02-4778

CERTIFICATE OF SERVICE

I, HELEN KANE, hereby certify that on October 30, 2003, a copy of the forgoing letter was served by placing same, first class postage prepaid, in the United States Mail, addressed to:

Daniel Silverman, Esquire
1429 Walnut Street
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